

THE NEED FOR IMPLEMENTATION OF A UNIFORM CIVIL CODE IN INDIA

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ABSTRACT

The civil laws relating to marriage, divorce, adoption, inheritance, etc. in India are governed by the different laws of the different religious communities (HMA 1955, ICM 1872, SMA 1954, PMDA 1869, DMMA 1939, IDA 1869, HAMA, 1956 and so on) since the country's independence. Most of these laws are not codified and are considered to be biased. Uniform Civil Code was inserted while framing the Constitution of India with the sole motive of implementing it as and when the country is ready to accept it. Seventy-five years have passed, and still, Uniform Civil Code remains untouched.

The researcher in this paper examines the reasons why implementation of a Uniform Civil Code is the need of the hour and the challenges pertaining to its implementation. The researcher further explains how an ideal Uniform Civil Code if achieved would help in providing equal treatment to all the citizens as well as ensure smooth functioning of the Indian Constitution.

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INTRODUCTION

“We are Indians, firstly and lastly.”

-Dr Bhimrao Ambedkar.¹

India is considered to be a huge nation due to the existence of the different religious communities and their religious personal laws. Succession, adoption, marriage, divorce, and other civil laws fall under this category. Under Article 44 of the Indian Constitution, the concept of a Uniform Civil Code was adopted for the sole purpose of unifying religious personal laws for everyone, regardless of gender identity, faith, social class, or other factors. However, it was moved to Part IV of the Indian Constitution (Directive Principles of State Policy) as the country was not ready for a Uniform Civil Code right after independence. Also, to make the minority religious groups feel secure in the country, there was a need to provide protection and acknowledgment to their rights. Although Article 37 of the Indian Constitution specifies that the Directive Principles of State Policy are unenforceable in a court, it does not mean that they are meaningless. The Directive Principles of State Policy (DPSP) are fundamental in nature when it comes to the country's governance.² The Indian Constitution has been in force for seventy-five long years, and yet India has not adopted a Uniform Civil Code for all its citizens.

On issues of national integrity, secularism, and gender equality, there have been heated and lengthy disputes about whether or not a Uniform Civil Code should substitute the existing religious personal laws. While the personal laws of the different religious communities are inconsistent, gender-biased, and founded on superstitious beliefs and practices, a Uniform Civil Code, on the contrary, aims to give everyone the same treatment.³

¹ B.R. AMBEDKAR QUOTES, https://www.brainyquote.com/quotes/b_r_ambedkar_380892 (last visited Mar. 14, 2022).

² Alka Bharati, *Uniform Civil Code in India-still a distant dream*, 4 AIJRHASS 167, 167 (2013).

³ Tanja Herklotz, *Dead Letters? The Uniform Civil Code through the eyes of the Indian Women's Movement and the Indian Supreme Court*, 6 SOUTH ASIA CHRONICLE 62, 62 (2016).

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THE CONCEPT OF UNIFORM CIVIL CODE

The three terms uniform, civil and code when combined make the phrase “*Uniform Civil Code*”.⁴

The dictionary meaning of the word “*uniform*” is “*the form of something*”. Although the interpreters use the terms “*uniform*” and “*common*” as synonyms, the Constitution of India explicitly mentions the word “*uniform*” instead of “*common*” under Article 44. If we go by their precise meanings, these two words are different, as the term “*uniform*” refers to applying one law in all circumstances. In contrast, the term “*common*” refers to using the same law in similar cases. The term “*civil*” comes from the Latin word “*civis*” which means “*citizens*”. It has many meanings.⁵ In the legal sense, it means “*the private rights and remedies available to an individual*”, unlike the rights and remedies available on criminal, political, or other related matters.⁶ These statutes are based on family, contracts, and compensation, among other things.⁷ The concept “*civil law*” comes from the Latin expression “*jus civil*”, which refers to a State’s municipal laws. These civil laws, as opposed to criminal laws, are the private laws of a State, and do not contain public or international laws.⁸ The word “*code*” comes from the Latin term “*codex*”, which means a textbook.⁹ According to recent meaning in law, code refers to the compilation or collection of laws in a logical or concise form of all general statutes systematically arranged that govern a large province or area and are based on uniform principles.¹⁰ The word “*civil*” is often used in the expression “*civil code*”, which refers to the codified laws of a State that are impartial and govern the civil relations between the citizens.¹¹

Therefore, these three terms form the expression “*Uniform Civil Code*” when put together, and it means a set of rules that are applicable to all, irrespective of gender identity, faith, social class, or other factors.

⁴ Encyclopaedia Americana, Vol.-6 (1960), 734.

⁵ *Id.*

⁶ The Shorter Oxford English Dictionary, Vol.-1 (1973), 34.

⁷ *Supra*, note 4.

⁸ Encyclopaedia Britannica, Vol.5 (1959) 743.

⁹ Encyclopaedia Americana, Vol.-7 (1960) 194.

¹⁰ The Oxford Companion to Law (1980) 236.

¹¹ Encyclopaedia Americana, Vol.-7 (1960) 194.

HISTORICAL BACKGROUND OF UNIFORM CIVIL CODE IN INDIA

The British government first established the concept of a Uniform Civil Code in India in 1835. The then government issued a report strongly urging the implementation of a uniform civil code covering crimes, evidence, contracts, and other related matters. Personal laws, on the other hand, were excluded from such codification. When major objections to the Hindu Personal Laws were raised in 1941, the government was forced to form the B. N. Rau Committee. Following its recommendations, Hindu laws governing intestate or unwilled succession were revised and codified resulting in the enactment of the Hindu Succession Act. Not just Hindus, but Buddhists, Jains, and Sikhs are also subject to these regulations. The minority laws for Muslims, Christians, Parsis and Jews, on the other hand, are different and are yet to be codified.¹²

The Supreme Court has also emphasized the necessity for a uniform civil code in India in various decisions. It has often been asserted that Islamic practices such as polygamy and triple talaq are essentially unethical and should be abolished since they impinge on a woman's basic right to a dignified existence.¹³

THE CONSTITUENT ASSEMBLY DEBATES ON UNIFORM CIVIL CODE IN INDIA

The establishment of a Uniform Civil Code has been the subject of heated debate in India's Constituent Assembly. The majority of the Muslim members were against it. They argued that because they are members of minorities, their personal laws must be protected, and that enacting a Uniform Civil Code would be unfair to them because it would benefit the majority. However, these criticisms were addressed by emphasizing on the fact that India already has uniform laws on a lot of matters and that the unification of personal laws would only promote national integrity. It was further stated that it is essential to separate certain personal laws from religion, and that the practices covered under the personal laws which are considered to be religious, are not essential religious practices. It also ensured that no personal law would be amended forcibly if people opposed it.¹⁴

¹² UNIFORM CIVIL CODE, <https://www.drishtias.com/daily-updates/daily-news-editorials/uniform-civil-code-1> (last visited Mar. 14, 2022).

¹³ *Id.*

¹⁴ MP Jain, *Indian Constitutional Law* 1490 (8th ed. 2021).

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UNIFORM CIVIL CODE UNDER THE CONSTITUTION OF INDIA

Article 44 of the Indian Constitution defines Uniform Civil Code. It was added to Part IV of the Constitution, which addresses the Directive Principles of State Policy. A state is expected to ensure uniformity when adopting laws for the residents of India, according to this Article. The idea of a uniform civil code was proposed to address India's diversity-related challenges. Since the Constitution of India came into existence, this Article has been hardly used. The codification and secularization of the Hindu Personal Laws is the only step that has been taken so far in the direction of this Article. The Personal Laws of Muslims are yet to be codified.¹⁵

UNIFORM CIVIL CODE AS A DIRECTIVE PRINCIPLE OF STATE POLICY

The Directive Principles of State Policy are found in Part IV of India's Constitution. DPSPs are guidelines that a government should examine when enacting legislation for Indian citizens. These directives were inserted with the sole motive of looking after the welfare of the citizens because the State as defined under this Part is a "Welfare State" and not a mere "Police State". Although Article 37 specifies that the DPSPs are unenforceable in a lawcourt, it also states that the guidelines are necessary for the country's governance and that the government must make laws in accordance with the DPSPs.¹⁶

UNIFORM CIVIL CODE AND THE PERSONAL LAWS OF INDIA

Despite the fact that Article 44 of the Indian Constitution mandates the State to adopt uniform laws for all citizens, little effort has been taken to put it into practice. The only step that has been taken towards implementing such a code is the codification of the Hindu Personal Laws. However, no codification has been made yet concerning the Muslim Personal Laws.¹⁷ Succession, adoption, marriage, divorce, and other personal laws of several religions are discriminatory. One such example is the practice of polygamy. Moreover, the religious personal laws of different religions are contradictory and primarily based on superstitious beliefs and practices.

¹⁵ *Id.* at 1490-1491.

¹⁶ Durga Das Basu, *Constitutional Law of India* 107 (3rd ed. 1983).

¹⁷ MP, *supra* note 9, at 1491.

The implementation of a uniform civil code would help strengthen secularism in the country, but it is essential to first separate law from religion for that to happen.¹⁸

In one of its historic decisions, the Supreme Court acknowledged the difficulties inherent in replacing India's personal laws with a uniform civil code. But it also stated that to give the Constitution its actual meaning, a uniform civil code must be adopted.¹⁹

UNIFORM CIVIL CODE AND THE FUNDAMENTAL RIGHTS

The implementation of a uniform civil code, critics argue, would impinge on the basic right to freedom of religion granted by Article 25 of the Indian Constitution. But this is a misconception because we need to understand that it is only faith that is protected by this Article and not any practice that is against health, public order or morality.²⁰

Furthermore, any law that is incompatible with the Fundamental Rights entrenched in Part III of the Indian Constitution is void, according to Article 13 of the Constitution.²¹

Women's fundamental rights to equality and life, as well as the LGBTQIA+ community's, are violated by personal laws, which are contradictory and should be repealed. The implementation of a uniform civil code would allow the Constitution of India to function in conformity with the fundamental rights guaranteed by it.

GENDER JUSTICE AND UNIFORM CIVIL CODE UNDER THE CONSTITUTION OF INDIA

The word "gender" is not defined in the Indian Constitution. It has only used the term "sex". However, it provides a basic idea of gender justice by including various provisions, such as the equal treatment before the law and equal protection. India is still far from achieving gender justice in its true sense²² as most of the provisions only talk about men and women and not the citizens in general. For this reason, the rights of the LGBTQIA+ community have hardly been given any recognition. As a result, gender-neutral regulations are required, and a Uniform Civil Code would be ideal for this.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*, at 1301.

²¹ INDIA CONST. art 13.

²² Legislations for Enabling Gender Justice in India (Mar 16, 2022), <https://geographyandyou.com/legislations-for-enabling-gender-justice-in-india/>.

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UNIFORM CIVIL CODE AND THE INTERNATIONAL LAW

India has ratified several international conventions. The International Covenant on Civil and Political Rights (ICCPR), which was ratified in 1966, and the International Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), which was ratified in 1979, are two of them. When an international convention is ratified by a country, it is bound to obey the provisions mentioned under it legally, according to International Law. On that account, India is obligated to enforce such provisions to achieve gender justice in the country.²³

Surprisingly, even after ratification, the citizens of India continue to face injustice, particularly in subjects related to weddings, separations, adoptions, succession, and other related matters. This is due to the fact that different religious communities have different beliefs and personal laws. Therefore, in order to eliminate such inequality and conflicting provisions of different religious communities, it is essential to substitute the existing personal laws with a uniform civil code that will not only operate in consonance with the provisions of the Indian Constitution, but as well as with the laws laid down under International Law.²⁴

JUDICIAL PRONOUNCEMENTS

A uniform civil code in India has been emphasized in a number of court decisions. The following are a few of them:

- The Supreme Court proposed taking efforts towards adopting a uniform civil code in the case of *Ms Jorden Diengdeh v. S. S. Chopra*²⁵. It looked at the various aspects of Indian marriage laws, such as judicial separation, divorce and nullification of marriage, and concluded that they are far from being uniform. The Court went on to say, “It is high time for the legislature to step in and adopt uniform marriage laws for all citizens of the country, regardless of caste, gender, religion, or other factors.”
- The Supreme Court ruled in *Mohd. Ahmed Khan v. Shah Bano Begum*²⁶ “a Muslim wife is entitled to support from her husband after the iddat period had expired”. The Court in the case proposed to enact a uniform civil code because it has been a dead

²³ Jyoti Rattan, *Uniform Civil Code In India: A Binding Obligation Under International And Domestic Law*, 46 ILI 577, 577 (2004).

²⁴ *Id.*

²⁵ *Ms Jorden Diengdeh v. S.S. Chopra*, AIR 1985 SC 934.

²⁶ *Mohd Ahmed Khan v. Shah Bano Begum*, AIR 1985 SC 945.

letter since the Indian Constitution came into existence and there has been no indication of its formal adoption. It also stated that a uniform civil code would aid the nation's integrity by removing inequalities in the law that exist due to the conflicting ideologies of the different religious communities. The Court acknowledged the difficulties in creating a uniform civil code. Nonetheless, it emphasized that a start must be made in order to give the Constitution full meaning, and that the time has come to do so. It further stated that the State must ensure a uniform civil code for every individual and possess legislative authority.

- The court defined the concept of uniform civil code under Article 44 in the case of **Sarla Mudgal v. UOI**,²⁷ declaring that in a civilised society, there should be no required relationship between personal law and religion. It was also stated, “*while Article 25 ensures the fundamental right to freedom of religion, issues such as marriage, divorce, succession, adoption and so on are not covered*”. The court further noted that, regardless of their sacramental origins, Hindu Personal Laws are codified. The Muslim Personal Laws, on the contrary, are yet to be codified. It also encouraged the government to reconsider Article 44 and go forward with its implementation.
- In the case of **Lily Thomas v. UOI**,²⁸ the Court clarified the decision made in the case of Sarla Mudgal, stating “*although it has not provided any direction for the immediate implementation of a uniform civil code, such a code would aid in the preservation of the nation's integrity and would eliminate conflicting ideologies*”.
- The court held “*religion is a matter of personal faith that cannot be mingled with secular activity*” in **S.R. Bommai v. UOI**²⁹. By introducing a legislation, the government can control secular activities.
- The court concluded in the case of **John Vallamattom v. UOI**³⁰ that secular laws relating to marriage, succession, and other matters cannot be brought under the purview of the freedom provided by Articles 25 and 26 of the Indian Constitution. It went on to say, “*Any legislation that tries to bring such matters within the scope of Articles 25 and 26 would be regarded as a dubious religion and while Articles 25 and 26 of the*

²⁷ Sarla Mudgal v. UOI, AIR 1995 SC 1531.

²⁸ Lily Thomas v. UOI, AIR 2000 SC 1650.

²⁹ S. R. Bommai v. UOI, (1994)3 SCC 1.

³⁰ John Vallamattom v. UOI, AIR 2003 SC 2902.

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Constitution of India guarantee the fundamental right to freedom of religion, Article 44 dictates the separation of civil laws from religion.”

OBJECTIVES OF AN IDEAL UNIFORM CIVIL CODE

- Help in achieving secularism:

Because of the presence of many religious communities, India is a huge country. The religious personal laws of various religious communities influence civil laws like wedding, divorce, fostering, inheritance and other related matters and are contradictory to each other. A common civil law would help to eliminate such diversities and establish secularism.³¹

- Provide equal status to everyone:

A uniform civil code would ensure that everyone irrespective of caste, creed, religion, gender, or other factors, has equal rights. Due to the diversity of religious beliefs among Indian citizens, the country has not adopted many legislations. By excluding religion and faith from codification, a uniform civil code would aid in the modification or adoption of those laws in the country. It would further reduce the vote bank politics. The politicians would not be able to use religion as a weapon during elections if all the citizens were treated equally and had the same set of rules to follow.³² A uniform civil code would provide women and the LGBTQIA+ group equal status because it would apply to everyone regardless of caste, creed, gender, religion, or other factors.

The implementation of such a code would also help reduce the power of those people who use personal laws as a weapon to suppress the weaker sections of society.³³

- Social Reforms:

Social reforms would be aided by a uniform civil code. Because Muslim Personal Laws are not codified in India, Indian Muslim women are not protected by them. Women in other Islamic nations such as Pakistan, Bangladesh, Morocco and Turkey, are protected since their religious personal laws are codified. As a result, a uniform civil code would aid in the codification of

³¹ Can We Implement Uniform Civil Code in India? Pro's & Cons of UCC -Explained, GOD OF SMALL THING (Mar 15, 2022) , <https://godofsmallthing.com/uniform-civil-code/>.

³² CAN, *supra* note 26.

³³ *Id.*

personal laws, the protection of women, particularly Muslims and Christians, and the implementation of social reforms across the country.³⁴

- Progress of other countries:

Countries that have a uniform civil code are more progressive than countries that do not have one. This sends a strong message that adopting a uniform civil code in India will contribute to the country's progress and transformation into a better democratic nation.³⁵

- Help in achieving integrity of the nation:

The law sees everyone equally. The criminal and civil laws, excluding the personal laws, are already uniform. Therefore, unification of the personal laws would curb all the differences due to the existence of different religious personal laws and would help achieve the nation's integrity.³⁶

- Supreme Court is not adequate for the personal laws:

The Supreme Court is inadequate when it comes to reforms in the personal laws as it requires the people suffering injustice to be vocal which is hardly the case, and when they do, it takes years to resolve such matters by way of litigation. It would also be impractical for the Supreme Court to deal with a variety of personal laws. As a result, a uniform civil code would aid in the elimination of the complexities while also saving precious time.³⁷

CHALLENGES IN THE IMPLEMENTATION OF A UNIFORM CIVIL CODE -

- Difficulty due to diversity:

It is difficult to create the same set of regulations for everyone since they must be neutral towards all religions. Because the cultural diversity of India is vast, the lawmakers need to

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ Shalina A. Chibber, *Charting a New Path Toward Equality in India: From Religious Personal Laws to a Uniform Civil Code*, 83 ILJ 695, 707-708 (2008).

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consider everybody's demands and come up with just laws. It would also be quite challenging for some people to accept uniform laws and give up their religious personal laws, which they have been practicing for a long time now.³⁸

- The fear that a Uniform Civil Code will encroach upon one's fundamental right to religious liberty:

It is believed by a lot of people that the adoption of a uniform civil code would violate their basic right to religion. One of the key reasons for the extended delay in its adoption is because of this. The minority population, particularly the Muslim Community was totally against the implementation of a uniform civil code, fearing that it would violate their basic right to freedom of religion and subsequently benefit the majority population.³⁹

- Not the perfect time:

India is not yet ready for the adoption of a uniform civil code, as the Muslim population, which is a minority, has been vocal in its opposition. They still feel insecure, and they require time to gain confidence before accepting the implementation.⁴⁰

CONCLUSION

It has been seventy-five long years since the Indian Constitution came into existence, however, Article 44 still remains untouched. If the mentality of the people cannot change a bit in 75 years, it never will and therefore, there will never be a perfect time to implement it. Although Article 37 states that the Directive Principles are unenforceable in any lawcourt, it does not mean that these principles are meaningless. These principles are essential for the country's governance and the State is bound to abide by these principles while drafting the laws for its citizens. Moreover, Article 13 states that any law that violates the Fundamental Rights enshrined in Part III of the Indian Constitution shall be void. This raises a question on the constitutional validity of the Religious Personal Laws as they infringe upon the fundamental rights of women as well as the LGBTQIA+ community.

³⁸Uniform civil code (UCC): Pros and Cons in A Nutshell, CLEAR IAS (Mar 14, 2022), <https://www.clearias.com/uniform-civil-code-ucc/>

³⁹ *Id.*

⁴⁰ *Id.*

The implementation of a uniform civil code would lead to the protection of the basic rights of everyone and not just women, which the personal laws fail to do. It would also assist in the legalisation of same-sex marriages, which is currently forbidden under the existing marriage laws.

However, an ideal uniform civil code can only be achieved when utmost precautions are taken while drafting it to ensure that the laws are not biased towards any particular community.

We must also remember that we are Indians before we are Hindus, Muslims, Christians, Parsis, Sikhs, Jains or Jews. And therefore, as Indians, all of us should be treated equally. Jai Hind!